



COMMONWEALTH of VIRGINIA
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TO: KARIN CLARK
Virginia Department of Social Services

FROM: MICHELLE A. L'HOMMEDIEU
Assistant Attorney General

DATE: April 16, 2013

**SUBJECT: Exempt Regulations for Submission of Financial Information for Licensure;
22VAC40-80 (3949/6546)**

I am in receipt of the attached regulations reflecting the changes in Virginia statutory law made by Chapters 182 and 545 of the *2013 Acts of the Assembly* regarding the submission of financial information for licensure. You have asked the Office of the Attorney General to review and determine if the State Board of Social Services ("State Board") has the statutory authority to promulgate the proposed regulations and if the proposed regulations comport with applicable state law.

Virginia Code § 63.2-217 mandates that the State Board promulgate regulations that are necessary to carry out the provisions of Title 63.2. *2013 Acts of the Assembly*, Chapters 182 and 545, change Virginia Code § 63.2-1702 and 63.2-1707 regarding the submission of financial information for licensure, which statutory went into force upon passage. It is my opinion that the State Board has the authority to promulgate these regulations, subject to compliance with the provisions of Article 2 of the Administrative Process Act ("APA") and has not exceeded that authority. To date, the Board has not yet acted on these regulations; and the Agency Background Document available on Town Hall reflects the as yet unknown date of Board action.

Based on the foregoing, it is my view that these regulations are exempt from the procedures of Article 2 of the APA pursuant to Virginia Code § 2.2-4006(A)(4)(a) provided the regulations are filed with the Registrar within 90 days of the law's effective date and the

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requirements of Virginia Code § 2.2-4006(B) and (C) are met. If you have any questions or need additional information about these regulations, please contact me at 786-6005.

cc: Kim F. Piner, Esquire

Attachment

Project 3658 - Final

DEPARTMENT OF SOCIAL SERVICES

Information for Licensure-General Procedures

22VAC40-80-20. Preplanning.

A. Licensing staff are available throughout the application or licensing process to answer questions and provide consultation and technical assistance (see 22VAC40-80-130).

B. In order to avoid costly errors, applicants and prospective applicants are urged to present their building plans to the department as early as possible and before entering into contracts in order to assure that the building can be preapproved as meeting the department's regulations (see 22VAC40-80-150).

C. ~~In addition to making~~ The department will make an on-site inspection of the proposed facility and the proposed services; ~~the department will investigate the financial responsibility of the licensee and will investigate the character and reputation of the licensee and, if required, staff and household members; and upon receipt of the initial application will investigate the financial responsibility of the applicant~~ (see 22VAC40-80-160).

22VAC40-80-160. The investigation.

A. Upon receipt of the application the commissioner shall:

1. Cause an investigation to be made of the activities, services, and facilities of the applicant, and of his character and reputation;

2. If the applicant is an association, partnership, limited liability company, or corporation, cause an investigation of the character and reputation of its officers and agents, and

3. Upon receipt of the initial application, cause an investigation of the applicant's financial responsibility.

~~A.~~ B. At the time of the initial application and annually thereafter, the applicant or licensee shall be responsible for obtaining inspection reports from appropriate fire and health agencies to determine compliance with applicable regulations.

EXCEPTION: Subsection A B of this section does not apply to child placing agencies or family day systems.

1. All buildings shall be inspected and approved by the local building official when required. This approval shall be documented by a Certificate of Use and Occupancy indicating that the building is classified for its proposed licensed purpose.

2. At the time of the initial application and at least annually thereafter, the applicant or licensee shall obtain an inspection report from state or local fire authorities, as applicable, to determine compliance of the building or buildings with the Virginia Statewide Fire Prevention Code.

3. At the time of the initial application and at least annually thereafter, the applicant or licensee shall obtain an inspection report from state or local health authorities that shall include approval of general sanitation and, if applicable, water supply, sewage disposal systems, and food service operations for the building or buildings in which the facility is operated.

~~B.~~ C. The department's representative will make an on-site inspection of the proposed facility or agency and an investigation of the proposed services, as well as an investigation of the character, reputation, and financial responsibility of the applicant. Compliance with all standards will be determined by the Department of Social Services. The licensee is responsible for correcting any areas of noncompliance found during any on-site inspection.

NOTE: See 22VAC40-90, 22VAC40-190 or 22VAC15-50, as applicable.

~~C.~~ D. The applicant or licensee shall at all times afford the department's representative reasonable opportunity to inspect all of the facility's or agency's buildings, books, and records. Records that contain confidential proprietary information furnished to the department pursuant to this section shall be exempt from disclosure pursuant to subdivision 4 of § 2.2-3705.5 of the Code of Virginia.

~~EXCEPTION: Section 63.2-1702 of the Code of Virginia provides for an exception in regard to inspection of financial records of child welfare agencies under specified conditions. At the time of the initial application, the financial records of an applicant shall not be subject to inspection if the applicant submits an operating budget and at least one credit reference.~~

~~D.~~ E. The applicant or licensee shall also allow the department's representative to interview the facility's or agency's agents, employees, residents, participants, and any person under its custody, control, direction, or supervision. Interviews with residents, participants, and any person under the facility's or agency's custody, control, direction, or supervision shall be:

1. Authorized by the person to be interviewed or his legally authorized representative; and
2. Limited to discussion of issues related to the applicant's or licensee's compliance with applicable laws and regulations, including ascertaining if assessments and reassessments of residents' cognitive and physical needs are performed as required under regulations for licensure of the facility or agency.

~~E.~~ F. After the on-site inspection the licensing representative will discuss the findings of the investigation with the administrator, licensee or designee. As applicable, the applicant shall submit an acceptable plan for correcting any areas of noncompliance following these discussions.

F. G. At any time during the investigation, an applicant or licensee may request an allowable variance to any standard that creates a special hardship. (See Part V (22VAC40-80-230 et seq.) of this chapter Allowable Variances.)